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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 Arnold Navarro, et al.,
13 Plaintiffs,
14 v.
15 SmileDirectClub, Inc., et al.,
16 Defendants.

Case No. 3:22-cv-00095-WHO
Judge: Hon. William H. Orrick
JOINT CASE MANAGEMENT STATEMENT
Date Removed: January 6, 2022

1 Pursuant to this Court's Order dated June 1, 2022, the Parties submit this Case Management
 2 Statement.

3 **DEFENDANTS' STATEMENT:**

4 On September 15, 2022, Navarro filed an arbitration demand with two counts for declaratory relief
 5 to determine whether the dispute is arbitrable and a third count asking, if the first two counts were decided
 6 against Navarro, to resolve the substantive dispute presented in the First Amended Complaint filed with
 7 this Court. The demand named SmileDirectClub, Inc. and SmileDirectClub, LLC (collectively, "SDC
 8 entities") as respondents.

9 The AAA appointed Hon. Michael J. Seng (ret.) as an arbitrator on April 28, 2023. After a
 10 preliminary hearing, briefing, and argument, Arbitrator Seng issued an Order on August 21, 2023
 11 concluding that the dispute is arbitrable. In Navarro's original brief, he raised an argument regarding the
 12 AAA's Health Care Due Process Protocol. He withdrew that argument in his reply brief.

13 Navarro filed a second Demand for Arbitration with the AAA on September 8, 2023, this time
 14 naming the SDC entities, plus Dr. Jeffrey Sulitzer, and Sulitzer P.C. as respondents. Navarro's second
 15 arbitration demand pursues the same seven substantive claims identified in the first arbitration demand
 16 and in the First Amended Complaint filed in this Court.

17 Arbitrator Seng held a telephonic status conference on September 11, 2023. Respondents objected
 18 to Plaintiff's filing his second Demand for Arbitration while the first demand remained pending. At the
 19 hearing, Arbitrator Seng ordered simultaneous informal briefing on whether discovery should be permitted
 20 before briefing on the issue of clause construction, under Rule 3 of the AAA's Supplementary Rules for
 21 Class Arbitration. Arbitrator Seng reiterated that order in his Second Management Order, dated
 22 September 11, 2023. He did not suggest in that order that he had any question whether the arbitration
 23 would proceed, nor did he suggest that Navarro had sought to dismiss his first arbitration demand (the
 24 only one being actively arbitrated). The parties submitted their briefs on September 25, 2023.

25 Plaintiff has not filed any written request to dismiss the first arbitration demand. Defendants do
 26 not recall a formal oral request, either. Instead, Defendants' recollection is that at the hearing, the
 27 Arbitrator offered Plaintiffs the opportunity to move to amend their demand, but Plaintiff's counsel

1 resisted that offer, contending that there were no active claims before the Arbitrator. Defendants further
 2 recall that when Plaintiff's counsel suggested that if any claims remained before the Arbitrator, he might
 3 move to dismiss them, the Arbitrator warned him that dismissing them would risk a dismissal with
 4 prejudice.

5 Arbitration proceedings are currently stayed under the Bankruptcy Code's automatic stay. On
 6 September 29, 2023, SmileDirectClub, Inc.; SmileDirectClub, LLC; and certain affiliated entities (each a
 7 "Debtor" and collectively, the "Debtors") filed a voluntary petition for reorganization in the U.S.
 8 Bankruptcy Court for the Southern District of Texas. Arbitration proceedings are currently stayed as
 9 against the Debtors under the Bankruptcy Code's automatic stay. On October 3, 2023, SmileDirectClub,
 10 Inc. and SmileDirectClub, LLC filed a Notice of Suggestion of Bankruptcy with the AAA. On October
 11 18, 2023, the AAA sent a letter notifying the parties that because the bankruptcy petition stays proceedings
 12 automatically, the AAA was suspending administration of the matter.

13 Defendants have not in any way waived the Bankruptcy Code's automatic stay, as (a) proceedings
 14 in this Court were stayed before the bankruptcy, (b) the AAA has stayed substantive proceedings in light
 15 of the bankruptcy, (c) Defendants have not insisted on any proceedings on their substantive claims, and
 16 (d) Defendants have not intentionally relinquished any rights under the automatic stay. Currently no
 17 motion for relief from stay has been granted by the Bankruptcy Court. Regardless, out of an abundance
 18 of caution, Defendants will file a Suggestion of Bankruptcy on the docket.

19 **PLAINTIFF'S STATEMENT:**

20 On September 15, 2022, Plaintiff Arnold Navarro ("Plaintiff") filed an arbitration demand stating
 21 certain causes of action. The demand named SmileDirectClub, Inc. and SmileDirectClub, LLC
 22 (collectively, "SDC entities") as respondents.

23 The AAA appointed Hon. Michael J. Seng (ret.) as an arbitrator on April 28, 2023. After a
 24 preliminary hearing, briefing, and argument, Arbitrator Seng issued an Order on August 21, 2023. The
 25 Arbitrator did not decide whether the case lacked arbitrability for failure to have the AAA informed
 26 consent document.

27 Plaintiff filed a second Demand for Arbitration with the AAA on September 8, 2023, this time
 28

1 naming the SDC entities, plus Dr. Jeffrey Sulitzer, and Sulitzer P.C. as respondents, and adding claims,
2 and has sought to raise with AAA administratively, that the dispute is not arbitrable based on the lack of
3 entering into an applicable AAA informed consent document.

4 Arbitrator Seng held a telephonic status conference on September 11, 2023. Respondents have
5 objected to Plaintiff's filing his second Demand for Arbitration while the first demand remained pending.
6 The regarding lack of arbitrability based on a lack of health care protocol has not been ruled on
7 administratively or otherwise by the AAA. At the hearing, Arbitrator Seng ordered simultaneous informal
8 briefing on whether discovery should be permitted before briefing on the issue of clause construction,
9 under Rule 3 of the AAA's Supplementary Rules for Class Arbitration, assuming such arbitration even
10 goes forward. The parties submitted their briefs on September 25, 2023. Plaintiff also has a request to
11 dismiss the first arbitration demand given the arbitrator ruled on the only issues before him. The request
12 to dismiss the first arbitration has not been adjudicated.

13 Navarro points out that the bankruptcy defendants failed to file a suggestion or notice of
14 bankruptcy in accordance with the Northern District Rules and believes that Defendants' insistence on
15 proceeding reflects a waiver of the automatic stay. Currently no motion for relief from stay has been
16 granted by the Bankruptcy Court.

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18 DATED: December 1, 2023

Respectfully submitted,

LINDEMANN LAW FIRM, APC

20 /s/ Blake J. Lindemann (with permission)
21 BLAKE J. LINDEMANN
22 Attorneys for Plaintiffs
23 ARNOLD NAVARRO AND ALL THOSE
SIMILARLY SITUATED

24 DATED: December 1, 2023

BENESCH FRIEDLANDER COPLAN
ARONOFF LLP

25 /s/ Michael Dominic Meuti
26 Michael Dominic Meuti
27 Attorney for Defendants
SmileDirectClub, Inc.; SmileDirectClub, LLC;
Jeffrey Sulitzer; and Jeffrey Sulitzer, D.M.D., P.C.

ATTESTATION

I, Michael Dominic Meuti, am the ECF user whose identification and password are being used to file this Joint Case Management Statement.

Opposing counsel consented to adding his signature to a prior version of this document that did not contain the paragraph spanning page 2, line 25 through page 3, line 4. During the exchange of drafts, opposing counsel had reviewed a version of the Joint Case Management Statement that contained that text in a footnote and did not object to the substance of that footnote. After adding that paragraph, counsel for Defendants twice emailed and called Navarro's counsel regarding that addition, but Navarro's counsel did not timely respond to the email requesting that he reaffirm his consent to the inclusion of this paragraph in the Joint Case Management Statement. I informed Navarro's counsel that I would file this statement with the inclusion of the paragraph.

I attest under penalty of perjury that concurrence in this filing has been obtained from all signatories above with the caveat described above.

DATED: December 1, 2023

/s/ Michael Dominic Meuti